1950.

File No. S. Bel 9/50

K

Examined

Legal **DEPARTMENT**

A **BRANCH**

Subject:- Belgaum Suit

P 42 F-K

Civil suit No. 407 of 1949.

Balagouda Talyagouda Patil — Plff

Vs.

The State of Bombay — Defts.

For a declaration that- (1) the ~~Sanads~~ sanads issued by Govt. in respect of C.T.S. Nos. 3145/1 and 3145/2-A in Gaothan of Nipani cover the open space which is held to have been encroached upon (2) an injunction against Govt. & (3) in the alternative if the encroachment is proved, for a declaration that Govt. should charge the Plffs for the encroached land at the rates in force in 1930.

Civil Appeal No. 98 of 1954

S. Belgaum 9/50

S. Bel-9/50

C O N T E N T S.

Legal Department File No. S:Bel:9/50.

Sr.No.	R.I./C.No.	Subject	Pages.

Suits. Belgaum.

C.S.No. 407 of 1949.

B. T. Patil.

V/s

The State of B'bay.

For a declaration that (1) the sandals in the gaothan of Hippani cover the open space which is held to have been encroached upon (2) an injunction against Govt. (3) in the alternative, if the encroachment is proved, for a declaration that Govt. should charge the plff. for the encroached land.

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Civil Suit No. 407 of 1949.

IN THE COURT OF THE CIVIL JUDGE S. D. Belgaum.

1. Balagouda Fatyagouda Patil, Hindu, aged about 60, pensioner, residing at Hebbal, Taluka Hukeri, District Belgaum. — PLFF.

against.

1. The Province of Bombay, the summons to be served on the Collector, Belgaum. — DEFT.

Claim Rs:- 405/-

The above named plff hereby begs to state as follows:-

1. The peice of the land marked as C.F.S. plot No. 3145/1, situated at Nipani in District Belgaum, bounded by north by survey No. 73 and 74, on the west by C.F.S. plot No. 3146, on the south by satwai galli, and on the east by C.F.S No. 3145/2A.

2. The whole of the peice of land in the gavthan of Nipani as bounded and described above was given to the plff by the Government for period of 50 years for use and occupation on the usual terms and conditions under C.F. S. Rules. As per the Government's orders in this behalf, the plff paid to the Govt. a sum of Rs. 147/- on 11th December, 1930, as occupancy price of the same. A sanad in respect of the said plot was issued on the 15th December, 1930 to the plff for a period of 50 years with effect from the 1st August 1930 and the possession of the said plot was given to the plff on the 14th December 1930. The sanad clearly mentions what plots it relates to and what area it does cover. Both the plff and the deft have been acting on the sanad, and it was not and is not now open to the deft both in fact and in law to go behind the sanad, and to undo its legal effect. Such an act and procedure on the part of the deft and his servants are ultra vires and illegal and as such, are void and unenforceable in law and not binding on the plaintiff. The plff submits that as the said act and procedure run counter to the terms, conditions and contents of the

of the sanad referred to above, they seek to do what the deft is not in fact and in law entitled to do, and amount in law to an intended breach of contract as embofied in the sanad, which it is the right of the plff to prevent.

3. On the acquisition from the deft the plot as described in para 1 above, the plff acquired by private treaty in 1935 the adjoining peice of land viz. C.T.S plot No. 3145/2A and has been in possession of the same ever since.

4. In course of time, the plff raiseda building on these two plots at considerable costs to himself.

5. In the year 1935, while measuring survey No. 74 of Nippani, it was noticed by the District Inaspector of land records that some space was left uncounted for in the govthan area of Nippani. He reported the matter to the Collector,Belgaum, suggesting that space uncounted for may be included in plots Nos. 3145/1-2A, 3145-2B, 3145/3A and 3145/3B on payment of such occupancy price and rent as may be fixed by the Collector. It was alleged that 207 sq.yds of lands uncounted for were included in plot Nos.3145/1-2A The Collector sent the papers to the Mamlatdar, Chikkodi for submitting proposals regarding the occupancy and rent of the space uncounted for. Both the District Inaspectors of land records and the Collector should have noted in view of the sandds in respect of plot No. 3145-1-2A that in so far at least as the plff was considered, it was not open to them to agitate this matter. The said sanads explicitly mention the boundaries which cover the plots in question leaving no space therein which could legitimately be styled as unaccounted for. It is almost common peace of law that in a tie between boundaries and area, it is the former which overide the latter, and which are accepted as the real guide in the determination of any variance between the two.

6. The matter which was started in 1937 was several times sent down to the Mamlatdars and Prnat Officers and sent up by them to the Collector, Belgaum. Panch valuation were made from time to time. It was at a late stage of these proceedings that the plff was apprized of the same, and was called upon to submit his say. He clearly and unequivically denied his having made encroachments on the deft's land. In the alternative, he contended without prejudice to his rights, but with a view to avoid as far as possible any struggle with the Revenue authoriteis, that if any space unaccounted for was found with him, he should be charged assessment at the rate of one pie per sq. yard at which he was granted the plot in 1930. The matter was bandied from one officer to another till 26th August 1944, when the Collector ordered that the plff should pay for the encroached area of 207 sq.yard, regarding C.T.S. No. 3145/1-2A, Rs. 2484 as occupancy price and Rs. 6-8- as ground rent per year. The maintainance surveyor went even further than the Collector, and called upon the plff to pay not only Rs. 2484, but Rs. 51-3-0 as rent and local fund and Rs. 130 as fine, in all Rs. 2665-3-0. All the proceedings taken by the various officers and orderes passed by them, being contrary to the terms, conditions and contents of the sanads referred to above were ultra vires, and illegal and therefore, inoperative in law and not binding on the plff.

7. With a view to err on the safe side and not to leave any loop-hole for the deft to make any contentions under the Revenue Jurisdiction Act, Bombay Land Revenue Code or any similiar Act, the plff preferred an appeal to the Commissioner S.D., against the Belgaum Collector's order dated 26/8/1944 in respect of C.T.S plot No. 3145/1-2A at Nippani, which the Commissioner dismissed on the 17th September, 1947. Thereupon the plff appealed to the Bombay Revenue Tribunal, who rejected on the 6th November, 1948. All the facts narrated above furnish the plff with the necessary cause of action for filing this suit and seeking therein the reliefs the plff is entitled to.

8. The cause of action arose at Nippani within -

within the limits of the jurisdiction of this court, on or about the 6th November, 1948, when the final order was made as regards the matters in the dispute.

9. The suit is valued for purposes of the court fee stamp at Rs. 405/- and for the Court's jurisdiction and pleader's fees at Rs. 405/-.

10. A notice under section 80 C.P.C. has been duly served on the deft.

11. The plff, therefore, prays as under:-

(a) In as much as the sanads issued by thedeft in respect of C.T.S plot No. 3145/1-2A in the gavthan of Nippani in the District of Belgaum, do in fact cover what the deft calls as open space unaccounted for, it be declared that any orders passed by the deft, its subordinate officers and its Bombay Revenue Tribunal were ultra vires, illegal and inoperative in law and not binding on the plff, for which the claim is valued at Rs. 200/- for court fee-purposes.

(b) In consequence, the deft be perpatually rest-rained by the injunction from realising from the plff by any process of law, any occupahncy, rent; local fund ar ears of rent and local fund or fine in respect of what the deft calls as open space unaccounted for in C.T.S. plot No. 3145/1-2A in the gavthan of Nippani, for which the claim is ~~xiwad~~ valued at Rs. 5/- for court fee purposes.

(c) In the alternative, if the court finds that the deft is competent in fact andin law to urge, the afore said C.T.S.plot No. 3145/1-2A, contains, some space unaccounted for and to charge occupancy price, rent and so forth for the same, it be declared that the deft do charge the plff the same according to the rates which prevailed in 1930and were applied to C.T.S. plot No. 3145/1 and 3145/2A and not more, for which the claim is valued for court fee purposes

(d) the deft to pay the plff

(e) All such orders be pssed as the court deems to be just and reasonable to meet the ends of justice.

Sd. plaintiff.

dated 31st Oct. 1949.

within the limits of the jurisdiction of this court, on or about the 6th November, 1948, when the final order was made as regards the matters in the dispute.

9. The suit is valued for purposes of the court fee stamp at Rs. 405/- and for the Court's jurisdiction and pleader's fees at Rs. 405/-.

10. A notice under section 80 C.P.C. has been duly served on the deft.

11. The plff, therefore, prays as under:-

(a) In as much as the sanads issued by thedeft in respect of C.T.S plot No. 3145/1-2A in the gavthan of Nippani in the District of Belgaum, do in fact cover - what the deft calls as open space unaccounted for, it be declared that any orders passed by the deft, its subordinate officers and its Bombay Revenue Tribunal were ultra vires, illegal and inoperative in law and not binding on the plff. for which the claim is valued at Rs. 200/- for court fee purposes.

(b) In consequence, the deft be perpatually rest-rained by the injunction from realising from the plff by any process of law, any occupahncy, rent; local fund arrears of rent and local fund or fine in respect of what the deft calls as open space unaccounted for in C.T.S. - plot No. 3145/1-2A in the gavthan of Nippani, for which the claim is ~~vived~~ valued at Rs. 5/- for court fee purposes.

(c) In the alternative, if the court finds that the deft is competent in fact andin law to urge, the afore said C.T.S.plot No. 3145/1-2A, contains, some space - unaccounted for and to charge occupancy price, rent and so forth for the same, it be declared that the deft do charge the plff the same according to the rates which prevailed in 1930and were applied to C.T.S. plot No. 3145/1 and 3145/2A and not more, for which the claim is valued at Rs. 200/- for court fee purposes.

(d) The court do order the deft to pay the plff the costs of this suit.

(e) All such orders be passed as the court deems to be just and reasonable to meet the ends of justice.

dated 31st Oct., 1949.

Sd. plaintiff.

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Belgaum C.S.No.407 of 1949.

The plaintiff has encroached upon 207 square yards of Govt. land in the town of Nipani. This encroachment was discovered in 1937 and later in 1944, the encroached plot was granted to the plaintiff on payment of occupancy price and the usual rent. The plaintiff preferred appeals to the higher Revenue Authorities complaining that the price charged was excessive but the appeals did not meet with success. The plaintiff did not pay the occupancy price and in order to recover the charges recovery proceedings were started. To stem the recovery proceedings, the plaintiff has filed the present suit.

In the suit the plaintiff is claiming title to the encroached land on the strength of his sanads (Kabulayats) which show that his plots touch the boundary of S.No.74 (see map on p. 89, case papers). This sketch is incorrect but plaintiff is trying to take advantage of this discrepancy. The suit is defensible. Sanction may be accorded to the defence on the lines of the brief which is for approval.

29 Aug
23/5

The brief is an order &
As may be approved.
RW
-24/5-

RLA 24/5

Sanctioned 25/5

RECEIVED IN REVENUE DEPARTMENT
on 25-5-50
40 B

XNo. 7075
25-5-50

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Civil Suit No. 407 of 1949

In the Court of Civil Judge, S.Dn, at Belgaum.

1. Balagouda Tatyagouda Patil of Hebbal ... ... Plff.

against.

1. The Province of Bombay. ... ... Deft.

Herein the Written Statement of the Deft is as under:-

1. The allegations in the plaint are denied in toto.
2. It is denied that the disputed area of 207 Sq. yards, was granted to the plff out of C.T.S.No. 3145/1 and 3145/2A. All that was granted in respect of C.T.S.No. 3145/1 was an area equal to 137 Sq. yards only. It is denied that there was no space in between plff's plots and S.No. 74 which belong to Govt. and which remained un-accounted for in the sanads.
3. Mere mention of wrong bounderies would not confer a title to additional land on the plff, to the extent of 207 Sq.yards on the plff. The area of the lands granted to him, has been specifically mentioned in his Kabulayat and any surplus area found to be in his possession, much be considered as encroa--ched area. Government have, at no time admitted plff's -- title to the area in dispute. On the contrary, an inquiry by Government affirm, it was found that there was an -- encroachment to the extent of 207 sq. yard, on the part of the plff.
4. The occupancy price, rent. local fund, etc. for the plot encroached upon by the plff, have been levied by the Collecto under his order dated 26-8-1944. The plff cannot obtain the relief he has asked for, unless that order is set aside. The order was made by the Collector, under powers given to him under the Land Revenue Code and the Survey Acts. The suit is therefore governed by Article 14 of the Limitation Act - and as such, barred under the Law of Resumption - not having been brought within one year from the date of the order of the Collector. The plff cannot obtain any relief unless that

order is set aside.

5. Assuming that in the Map in the schedule attached to the Kabulayat, the boundary of the plot is shown as touching S.NO.74, still it is clear from the conduct of the parties that it was never regarded by them that the transaction involved more than 137 Sq. yards. The plff, cannot therefore lay claim to a greater area - relying on descrepancies in the Map. It is for the plff to establish affirmatively his title to the area in - dispute.

6. The plff is not entitled to the declaration or the injunction sought for in the plaint.

7. As regards the alternative prayer for a declaration - that the Deft should charge for the encroached land at the rates in force in 1930, such a relief cannot be granted at law. The price and the rates charged must be those - which are in force at the time of the grant namely the - year 1944.

8. The conduct of the plff shows that at no time he considered that he had title to the area claimed by him. He not only- admitted his encroachments in his appeals to higher -- authorities but he confirmed himself merely with the quotum of the occupancy price to be charged with reference to that - encroachments in those appeals. Plff therefore not entitled to any relief.

The suit may therefore be dismissed with costs.

Belgaum.

.- - 1950.

Dist. Govt. Pleader,
Belgaum.

Suits :

Belgaum.

For a declaration that (1) the sanads issued by Government in respect of C. T. S. Nos. 3145/1 and 3145/2A in the gaothan of Nippani cover the open space which is held to have been encroached upon (2) an injunction against Government and (3) in the alternative, if the encroachment is proved, for a declaration that Government should charge the plaintiff for the encroached land at the rates in force in 1930.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 7378.

Bombay Castle, 31st May 1950.

Letter from the Collector of Belgaum, No. L.A.W. 855, dated the 21st February 1950—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

Civil Suit No. 407 of 1949.

Balagouda Tatyagouda Patil ... ... Plaintiff;

versus

The State of Bombay ... ... Defendant.

Endorsement from the Commissioner, Southern Division, No. LST 426, dated the 1st March 1950—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Belgaum, No. 7241, dated the 29th May 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

Original

G. R., No. 7378, L. D., dated the 31st May 1950.

To

*The Revenue Department,
*The Commissioner, Southern Division,
*The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).
The Asst. Govt. Pleader, B.R.T. Bombay
*With a copy of the brief.

No. of 1950.

Copy forwarded for information and guidance to

Issued on 4/7/50

Submitted after issue -
File in S. Belgaum/50 (new)
5-7 Suppl.)

BELGAUM CIVIL SUIT NO. 407 OF 1949.

Chronological Statement of Facts.

This suit is filed by Shri Balagouda Tatyagouda Patil of Hebbal against the State of Bombay for a declaration that (1) the sanads issued by Government in respect of C. T. S. Nos. 3145/1 and 3145/2A in the gacthan of Nippani cover the open space which is held to have been encroached upon (2) an injunction against Government and (3) in the alternative, if the encroachment is proved, for a declaration that Government should charge the plaintiff for the encroached land at the rates in force in 1930.

2. On 8th December 1930, the Assistant Collector, Northern Division, Belgaum, granted the plot bearing C. T. S. No. 3145/1 in the gaothan of Nipani measuring 137 square yards to the plaintiff on payment of occupancy price of Rs. 147 and an annual ground rent of annas 12 for a period of 50 years. Later in 1935, the plaintiff acquired the adjoining plot bearing C. T. S. No. 3145/2A by private agreement. On 12th February 1937 the District Inspector of Land Records, Belgaum, reported to the Collector that some Government lands adjoining Survey No. 74 of Nipani were lying unaccounted for in the records and recommended their inclusion in the adjoining properties. On further inquiry, it was noticed that the adjoining plot holders had encroached upon the land and appropriated it for building purposes. This encroachment was admitted by the occupants and accordingly the Mamlatdar made a report to the Collector recommending grant of encroached land to the occupants on payment of occupancy price and rent. The plaintiff in this suit had encroached upon 207 square yards of land; and in accordance with the recommendations of the Mamlatdar the Collector of Belgaum by his order* No. C. T. S. 117, dated the 26th August 1944, granted this 207 square yards of encroached area to the plaintiff on payment of occupancy price of Rs. 2,484 and a ground rent of Rs. 6-8-0 per annum.

*P. 147, Case pp. File I.

3. On 20th January 1945, the plaintiff preferred an appeal to the Commissioner, Southern Division, against the Collector's order, on the ground that the price and rate charged were excessive but the same was dismissed* on 17th September 1947. The plaintiff then preferred a second appeal to the Bombay Revenue Tribunal but that was also dismissed* on 3rd June 1948.

*P. 187, File I.

*P. 205, File I.

4. As the plaintiff did not pay the occupancy price and other dues in respect of the plot granted to him proceedings were started for recovery of the amount by attachment and sale of his property. The plaintiff, thereupon, gave a notice of suit

on 1st August 1949 and thereafter on 31st October 1949 he filed the present suit in the Court of the Civil Judge, Senior Division, Belgaum, for the reliefs stated above.

Grounds of Defence.

Limitation.—The suit is for a declaration as well as for an injunction restraining Government from realising from the plaintiff by any process of law any occupancy price, rent, local fund, arrears of rent etc. for the plot encroached upon by the plaintiff. The right to make these recoveries arises from the order of the Collector of Belgaum dated 26th August 1944 whereunder the grant was made and the occupancy price and rent were determined by the Collector. So long as that order is operative, Government would be justified in making recoveries of the amounts due in pursuance of that order. The plaintiff cannot obtain the relief he has asked for unless that order is set aside and granting of the relief would necessarily involve the setting aside of that order. That order was *intra vires* the Collector and was passed by him in his official capacity. The suit is, therefore, governed by Article 14 of the Limitation Act (see Ganga and others *v.* Maharaj Das, I.L.R. 15 Lah. 389, Subana *v.* Secretary of State, 1915 M. W. N. 915) and not having been brought within one year from the date of that order is now barred. The time runs from the date of the order and not from the date of final order in appeal confirming the original order and in the circumstances the fact that the plaintiff filed appeals to the Commissioner and the Bombay Revenue Tribunal would not postpone the starting point of limitation (see Chotubhai *v.* Secretary of State, 22 Bom. L.R. 146; Ganesh *v.* Secretary of State, 22 Bom. L. R. 212).

2. *Merits.*—The plaintiff's whole case is based on the sanads issued in respect of plots Nos. 3145/1 and 2A. Thus it is contended in paragraph 5 of the plaint as follows: "Both the District Inspectors of Land Record and the Collector should have noted in view of the sanads in respect of plot No. 3145-1-2A that in so far at least as the plaintiff was concerned, it was not open to them to agitate the matter. The said sanads explicitly mention the boundaries which cover the plots in question, leaving no space therein which could legitimately be styled as unaccounted for. It is almost a common place of law that in a tie between boundaries and area, it is the former which override the latter, and which are accepted as the real guide in the determination of any variance between the two." This is the crux of the argument of the plaintiff. The sanad in respect of plot No. 3145/2A is not in the papers but the kabulayat in respect of plot No. 3145/1 is at page 89 of case papers received from the Collector. Plot No. 74 is shown there towards the north of the plot

granted to the plaintiff and on the basis of this, the plaintiff has taken up the contention that there can be no space in between his plot and Survey No. 74 and if there is any it should be taken to have been included in his grant. It is no doubt true that in the map in the Schedule attached to the kabulayat the boundary of the plot is shown as touching Survey No. 74, but this was probably because Government officers were unaware at that time of the existence of Government land between that plot and Survey No. 74. It was only in 1937 that it was discovered by the District Inspector of Land Records that some land adjacent to plot No. 74 was lying unaccounted for. Mention of wrong boundaries would not confer a title for additional land on the plaintiff. The area of the land granted to him has been specifically mentioned in his kabulayat and any surplus area found to be in his possession must be considered as encroached area. The conduct of the plaintiff also shows that he did not consider till the date of the suit that all the area in his possession passed to him under the grant. He not only admitted the encroachment but in his appeals to higher authorities he confined himself merely with the quantum of the occupancy price charged contending that it was excessive. It is said that where words of an instrument are ambiguous, the court may call in aid acts done under it as a clue to the intention (Brooms Legal Maxims, p. 463). The map may be ambiguous, but it is clear from the conduct of the parties that it was never regarded by them that the transaction involved more than 137 square yards of land. The area of Survey No. 3145/2A is also noted in the Property Register and the plaintiff cannot lay claim to a greater area relying on discrepancies in the map. The plaintiff is thus not entitled to the declaration or the injunction sought in the paragraphs 11 (*a*) and 11 (*b*) of his plaint. As regards the alternative prayer viz. that the court should grant a declaration that the defendant should charge the plaintiff for the encroached land at the rates in 1930 sought in paragraph 11 (*c*) it should be pointed out that the plaintiff has no right to seek such a declaration. The price and rates charged would naturally be those which are in force at the time of the grant. The prices in the locality are steadily rising and to fix the price with reference to the 1930 level of prices would be preposterous. The plaintiff had agitated this matter before higher Revenue Authorities and they have held that price charged is reasonable.

3. For all these reasons it should be urged that the suit fails and should be dismissed with costs.

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IN THE COURT OF THE CIVIL JUDGE, S.D., . EXH.

AT BELGAUM.

Regular Civil Suit No. 407 of 1949.

1. Balagouda Tatyagouda Patil, Aged about 60 years, Residing at Hebbal, Pensioner.

Plaintiff.

Against.

1. The Province of Bombay. Defendant.

Claim :-

The plaintiff sues for a declaration that the orders passed by the Defendant and its subordinate Officers and the Bombay Revenue Tribunal are ultra vires, illegal and inoperative in law and not binding on plaintiff in as much as the Sanads issued by defendant in respect of CTS Nos. 3145/1 and 2A do in fact cover what defendant calls open space unaccounted for; and for injunction restraining defendants from realising from Plaintiff any occupancy price, rent, arrears of rent, local fund and fine in respect of that plot; that alternatively if defendant is held competent to declare the space unaccounted for and to charge occupancy price, rent etc. for the same, it be declared that defendant do charge the same according to the rates applied in 1930, and for costs of the suit from the defendant.

It is alleged in the plaint that the plot CTS No.3145/1 in the Gavthana of Nipani was given to plaintiff by Government for a period of 50 years for use and occupation on usual terms, that plaintiff paid Rs 147/- as occupancy price for the same on 11-12-1930, and the Sanad was issued on 13-12-1930, mentioning what plot it relates to and what area it covers, that both plff and defendant have been acting on the Sanad and it is not open to deft to go behind it, that plaintiff acquired CTS No.3145/2A in 1935, and in course of time, raised buildings on the plots, that in 1935

while measuring S.No.74 of Nipani, the District Inspector of Land Records, noticed that some space was left unaccounted for in the Gavthan area, that he reported to the Collector suggesting inclusion of this space in plaintiff's plot no. 3145/1 & 2A on payment of such occupancy price and rent as may be fixed by the Collector, that this space measures 207 Sq.Yds., that in view of the explicit boundary in the Sanad, no space could be left which could legitimately be styled as unaccounted for, that when plff was called upon to sub it his say, he denied having made any encroachment but with a view to avoid any struggle with the Revenue Authorities, and without prejudice to his rights he contended that he should be charged assessment at the rate of 1 pie per sq.yd. at which he was granted the plot in 1930, that on 26-8-1944, the Collector ordered that plaintiff should pay for the encroached area of 207 Sq.Yds. Rs 2484/- as occupancy price and Rs 6-8-0 as ground rent per year, but the Maintenance Surveyor called upon Plff to pay Rs 2665-3-0 consisting of Rs 51-3-0 as rent and local fund and Rs 130/- as fine in addition to occupancy price, that all the proceedings taken by the various Officers and the orders passed by them being contrary to the terms and conditions in the Sanad, were ultra vires and illegal and are, therefore, inoperative in law and not binding on plaintiff, that plaintiff preferred appeal to the Commissioner S.D., who dismissed it on 17-9-1947, that then he appealed to the Bombay Revenue Tribunal, who also dismissed the appeal on 3-6-1948, that then plaintiff made Revision Application to the Hon.Revenue Member who rejected it on 6-11-1948, and hence this suit.

Defendant by W.S. (Ex.12) contends that only an area of 137 Sq.Yds. was granted to plaintiff in respect of CTS No. 3145/1, that a mere mention of wrong boundaries -- would not confer title on plaintiff to an additional land --

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when the area granted to him was specifically mentioned in the kabulayat, that any surplus area found to be in his possession must be considered as an encroached area, that Government never admitted plaintiff's title to the area in dispute, that in the inquiry it was found that there was encroachment to the extent of 207 Sq. Yds. on the part of the plff, that plaintiff cannot obtain any relief unless the Collector's order made on 26-8-1944 is set aside, that the order was made by the Collector under powers given to him under the Land Revenue Code and the Survey Acts, that the suit is governed by Art. 14 of the Limitation Act and not being brought within 1 year from the date of that order, it is barred by time, that plaintiff must affirmatively prove his title to the area in dispute, that plaintiff is not entitled to the declaration and injunction sought, that the alternative prayer that he should be charged at the rate in force in 1930 cannot be granted as the price and rates must those in force at the time of the grant, that plff not only admitted his encroachment in his Appeals but contested only the quantum of occupancy price to be charged in respect of the encroachment, that plaintiff is not entitled to any relief and his suit should be dismissed.

Issues framed by my predecessor at Ex. 24 are :-

1. Does plaintiff prove his title to the disputed area of 207 Sq. Yards ?
2. Is it necessary that the plaintiff should get the Collector's order dated 26-8-1944 set aside ?
3. Is the suit barred by limitation ?
4. Does plaintiff prove that the orders passed by the Dept and the subordinate Officers referred to in para 7 of the plaint are ultra vires, illegal and inoperative ?
5. Can the alternative relief asked for by plaintiff be granted?
6. If so, what occupancy price is the plaintiff liable to pay ?
7. Is plaintiff entitled to the declaration and injunction sought ?
8. What order ?

My findings are :-

1. No. 2. Yes. 3. Yes. 4. No. 5. No. 6. Does not arise. 7. No. 8. As per order.

R E A S O N S.

Plaintiff was originally given a plot measuring 137 Sq. Yds. out of R.S.No.63 on ground rent of 12 annas for a period of 50 years as per Kabulayat dated 13-12-1930 (Ex.46). Its CTS. No. was 3145/1. Subsequently he acquired the neighbouring plot CTS.No.3145/2 A, the kabulayat of which is at Ex. 47. Plff built a house on both these plots in about 1935, after getting necessary permission from the Nipani Municipality. (Vide Exs.59 to 62). Subsequently, during the course of the measurement of S.No 74, it was noticed that some space was left unaccounted for in the Gavthana area to the South of S.No. 74. The District Inspector of Land Records thereupon reported to the Collector that the land referred to as unaccounted for may be included in the adjoining properties CTS.No. 3145+2A, 2B, 3A and 3B on payment of such occupancy price and rent as may be fixed by the Collector. The Collector forwarded the copy of the report to the Mamlatdar, Chikodi for proposing the occupancy price and rent in respect of the encroached land (Vide Ex.68). The encroached portion so far as Plaintiff was concerned, was 207 Sq.Yds. Various panchanamas were made about the valuation. In the pancha-nama made on 10-4-1937 (Ex. 54 & 67) the valuation suggested was Rs 40/- per Guntha. Later on, on 31-12-1937 the valuation at 8 As. per Sq. Yd. for 207 Sq. Yds. was calculated to be Rs 103-8-0. (Ex. 53 & 66). Subsequently statements regarding rent, occupancy price and fine were proposed and revised. (vide Exs.70, 71 and 55). The final statement approved by the Collector on 24-8-1944 is at Ex.79. It mentiones all the details. According to it, the ground rent for the first three years from --

19 37

1935-36 to 1937-38 was calculated to be Rs 6-8-0 at 1/2 anna per Sq. Yd. As assessment was revised in 1938, the ground rent for subsequent six years from 1938-39 to 1943-44 was calculated to be Rs 39/- at Rs 3-2-0 per 100 Sq. Yds. per year. The annual rent was fixed at Rs 6-8-0. Fine of Rs 130/- was levied at 20 times the annual rent. Occupancy price of Rs 2484/- was charged at Rs 12/- per Sq. Yd. A total of Rs 2665-3-0 was, therefore, charged to plaintiff, and on these terms the encroachment was regularised by the Collector. (Vide Ex. 76)

The main contention of the Plaintiff in the Plaint is that he was misled by the description in the Kabulayat Ex.46, which was executed when he was granted 137 Sq. Yds. out of R.S.No.63. In the sketch drawn below the Kabulayat, the Northern boundary was shown as R.S.No. 74 and Southern boundary as Satvai Galli. It was, therefore, claimed in the plaint that he was owner of the whole site bounded by R.S. No. 74 on the North and Satvai Galli on the South. The sketch drawn on the form of the Kabulayat does not show that there was some space to the North of Plaintiff's plot and to the South of R.S.No.74, which was not accounted for. This space was detected for the first time in the Survey Measurement of R.S.No.74 made in 1937. It was then noticed that 207 Sq.Yds of excess area was encroached upon by Plaintiff. It is not now disputed before me that the Government had the right to measure the lands and fix up the area encroached upon and charge for it. It is admitted in the arguments before me that this area of 207 Sq. Yds. did not belong to Plaintiff and has been granted by Government under the Collector's order passed on 26-8-1944. Plaintiff was originally granted 137 Sq. Yds. only in 1930 under Ex. 46. Plff has led no oral evidence to show that he owned the additional area of 207 Sq. Yds. in suit by grant or otherwise, before the grant in 1944. In view of conceding of the point that these 207 Sq Yds. have been granted to him in 1944 as per Collector's order Ex. 76, Issue No.1 is answered in the negative.

The only questions pressed before me are that the occupancy price and rent are excessive and fine should not have been levied. The file of the correspondence shows that the Mamlatdar recommended exemption from fine as the encroachments were not deliberate. But obviously the recommendations were not accepted. Under Sec.61, para 4, (Bom. Land Revenue Code) the unauthorised occupant shall be liable to fine at the discretion of the Collector. It is, therefore, not a justiciable point. The Collector has exercised his discretion in favour of imposing the fine. The Collector has clearly acted within his powers in imposing the fine. Under Rule 103 of the Bom.Land Revenue Rules, the limit of fine to be levied when the land is unauthorisedly occupied and used for non-agricultural purpose is 20 times the non-agricultural altered assessment. He was, therefore, right in imposing the fine at 20 times the rent which is Rs 6-8-0 for the encroached land. The question of fine, therefore, goes out of the picture.

Regarding assessment, Sec.61 clearly lays down that the Collector's decision as to the amount of assessment payable for the lands unauthorisedly occupied shall be conclusive. The jurisdiction of the Civil Court to go into the question of incidence of assessment is barred by See. 4B of the Bombay Revenue Jurisdiction Act. While fixing the rent the circumstance that the revised assessment was levied in 1938 was taken into consideration, and the rent was fixed at the old rate upto 1937-38 and at the revised rate from 1938-39, onwards. The Collector has acted within his powers in doing so. It was argued for the Plaintiff that the Collector cannot impose revised assessment retrospectively, and the ruling in Ahmedabad Ginning and Manufacturing Co., Vs. Secretary of State (39 Bom.L.R.266) was cited in support of it. I do not think that the authority applies to this case. In that case the lands were already assessed as agricultural lands and subsequently converted --

21 54

to non-agricultural use. In this case, the encroached land was not assessed at all. The land is assessed from 1935-36 in which year Plaintiff actually used the encroached area. The land is liable to non-agricultural assessment from the time when it was so used till the date of the order. The altered assessment is not sought to be applied retrospectively The old rate is applied upto 1937-38 and the revised rate from 1938-39 onwards. Plff could not be allowed to enjoy the encroached land without payment of ground rent. It does not lie in his mouth to say that the rent should be recovered from the date of the order. Plaintiff is bound to pay arrears of rent for the whole period of use according to the rates prevailing, and he cannot escape the liability for such arrears. The objection regarding assessment or rent has, therefore, to be decided against Plaintiff.

The only question that remains is about the occupancy price. It is charged at Rs. 12/- per Sq. Yd. The plff's object -ion as pressed before the Revenue Authorities as also in the plaint was that it should have been calculated according to the rate which prevailed in 1930 and which was applied to the main plot CTS. No.3541/1 and 2A. That plea is obviously unreasonable. It appears from the Judgment of the Revenue Tribunal (Ex. 58) that the occupancy price charged by the Collector was considered reasonable. There is no evidence before me to show that the rate at which the Collector has calculated the occupancy price was different from the market rate prevailing at the time of the grant. Even though the encroached area was allowed to be granted to the encroacher, it was not an unconditional grant. The grant has to be accepted along with the terms which, in my opinion, are in no way unreasonable. The Collector has acted within the powers conferred upon him under the Land Revenue Code. The orders cannot be considered to be ultra vires or illegal in any way

The alternative relief that the rates prevailing in 1930 should have been applied is clearly unreasonable. I, therefore, answer Issues Nos. 4 and 5 in the negative. Issue No.6, does

not, therefore, arise, and even if it did, I hold that the occupancy price fixed by the Collector is proper.

Regarding Issue No.2, it is clear that Plaintiff claims a declaration that the orders of the Revenue Authorities right from that of the Collector to the one passed by the Revenue Tribunal are ultra vires, illegal and inoperative in law. I have already shown above that the orders are not only not ultra vires, but were passed in exercise of the powers conferred upon the Collector under the provisions of the Land Revenue Code. In order to get any relief, Pla- -intiff has to get the order set aside. As observed in Gangu Vs. Maharaj Das (15 Lahore 389) at page 405), the suit is in reality and substance one to set aside the order of the Collector and it makes no difference that a prayer to that effect is not expressly made in the plaint. The decla- -ration sought for amounts to getting the Collector's order set aside. I, therefore, answer Issue No.2 in the affir- -mative.

Ar. 14 of the Limitation Act applies to this case, and the starting point would be the date of the Collector's order, and the plaintiff had to file this suit within 1 year from that date. It was argued for the Plaintiff that the limitation would run from the order of the Government passed on 6-11-1948, when the Revenue Minister rejected his Revision application and the suit has been filed on 31-10-1949 within one year from that date, and so there is no bar of time. The ruling in Ganesh Vs. Secretary of State (22 Bom. L.R.212) provides a complete answer to this argument. It was held therein that the aggrieved party need not apply to the Court and may content himself with the various appeals allowed to the Revenue Authorities till he reaches the Governor in Council, but the Limitation Act provides that he must put his plaint on the file within one year if he wishes to have resort to the Court in order to get the order of the Revenue Authorities set aside. The argument that the time taken in filing successive appeals and Revision --

23 41

Applications to the Revenue Authorities should be excluded was held to be unsustainable. In view of the clear position of law, I hold that the suit is barred by time. I therefore, answer Issue.No.3 in the affirmative.

Plaintiff is, therefore, not entitled to any relief, and the suit is dismissed with costs.

O R D E R.

Suit dismissed with costs. Plaintiff do pay costs of Defendant and bear his own.

Dated:- 18-11-1953.

Sd/-N.G.Rajadhyaksha,
Civil Judge, Senior Dvn,Belgaum.

28-43

Suits:

Belgaum.-

For a declaration that (1) the Sanads issued by Government in respect of C. T. S. Nos. 3145/1 and 3145/2A in the gaothan of Nippani cover the open space which is held to have been encroached upon (2) an injunction against Government and (3) in the alternative, if the encroachment is proved, for a declaration that Government should charge the plaintiff for the encroached land at the rates in force in 1930.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 1585 | 52
Bombay Castle, 22nd January 1954.

Read Government Resolution, Legal Department No. 7378, dated the 31-5-1950.

Letter from the District Government Pleader, Belgaum No. J.911 dated the 26-11-1953, stating that the suit noted in the margin was decided by the Civil Judge, (S.D.) Belgaum on the 18-11-53 when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Belgaum. Civil Suit No. 407 of 1949. Balagouda Tatyagonda Patil... Plaintiff; V/s The State of Bombay ...Defendant.	:

"Suit dismissed with costs. Plaintiff do pay costs of Defendant and bear his own."

Letter from the District Government Pleader, Belgaum No. J. 918, dated the 27-11-1953, forwarding uncertified copy of the judgment.

RESOLUTION:- The result of the Suit is recorded.

By order and in the name of the
Governor of Bombay,

R Katarki

(R. T. Katarki)
Original Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Belgaum,
~~The District Government Pleader, Belgaum~~
The Secretary, Bombay Revenue Tribunal, Bombay.
The District Government Pleader, Belgaum.

Issued 22/1

KGK.
21/12.

Submitted for signature.
21/1
S S 21/1
DS (Civil)

Salut [illegible]

Fe ni S. Bejamin 9/50

23/1/54

S. Bel 9/50.
23/1/54

OSP's No. 366 of 28-4-54

27 44

9/50

DECREE.

Ex.No. 81.

In the Court of the Civil Judge, S.D., Belgaum.

at Belgaum.

Special Suit No. 407 of 1949.

Balagauda Tatyagauda Patil, Hindu, aged about 60, pensioner, residing at Hebbal, Taluka Hukeri District Belgaum.... Plff.

Versus.

The Province of Bombay... Deft.

Filed on 31-10-49. Admitted on 4-11-49.

Claim Rs 405/-.

The above-named plaintiff hereby begs to state as follows :-

1. The piece of the land marked as C.T.S. plot No. 3145/1, situated at Nipani in District Belgaum, bounded on the north by S.Nos.73 and 74, on the West by C.T.S. Plot No.3146, on the South by Satawai Galli, and on the East by Plot No.3145/2A.

2. The whole of the piece of land in the gatvhana of Nipani as bounded and described above was given to the Plff by the Government for a period of 50 years for use and occupation on the usual terms and conditions under C.T.S.Rules. As per the Government's orders in this behalf, the Plaintiff paid to the Government sum of Rs 147/- on 11th December, 1930, as occupancy price of the same. A Sanad in respect of the said plot was issued on the 13th December, 1930 to the plaintiff for a period of 50 years with effect from 1st August 1930 and the possession of the said plot was given to the plaintiff on 14th December, 1930. The Sanad clearly mentions what plots it relates to and what area it does cover. Both the plaintiff and the defendant have been acting on the Sanad, and it was not and is not now open to the defendant both in fact and law to go behind the Sanad, and to undo it legal effect. Such

an act and procedure on the part of the defendant and his servants are ultra vires and illegal and as such, are void and unenforceable in law and not binding on the plaintiff. The Plaintiff submits that as the said act and procedure run counter to the terms, conditons and contents of the sanad referred to above, they seek to do what the defendant is not in fact and in law entitled to do, and amount in law to an intended breach of contract as embodied in the Sanad, which it is the right of the plaintiff to prevent.

3. On the acquisition from the defendant of the plot as described in para 1 above the plaintiff acquired by private treaty in 1935 the adjoining piece of land viz., C.T.S.plot Nos.3145/2A and has been in possession of the same ever since.

4. In course of time, the plaintiff raised a building on these two plots at considerable costs to himself.

5. In the year 1935, while measuring survey No.74 of Nipani it was noticed by the District Inspector of Land Records that some space was left unaccounted for in the Gavthana area of Nipani. He reported the matter to the Collector, Belgaum, suggesting that the space unaccounted for may be included in plots Nos.3145/1-2A, 3145/2B, 3145/3A and 3145/3B on payment of such occupancy price and rent as may be fixed by the Collector. It was alleged that 207 sq. yds unaccounted for were included in Plot Nos.3145/1-2A. The Collector sent the papers to Mamlatdar, Chikodi, for submitting proposals regarding the occupancy price and rent of the space unaccounted for. Both the District Inspectors of Land Records and the Collector should have noted in view of the Sanads in respect of Plot No.3145-1-2A that in so far at least as the plaintiff was considered, t was not open to them to agitate this matter. The said Sanads explicitly mention the boundaries which cover the plot in question, leaving no space therein which could legitimately be styled as unaccounted for. It is almost a common place of law that in a tie between boundaries and area, it is the former which over-ride the latter, and which are accepted as the real guide in the determination of any variance between the two.

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6. The matter which was started in 1937 was several times sent down to the Mamlatdars and Prant Officers and sent up by them to the Collector, Belgaum. Panch valuation were made from time to time. It was at a late stage of these proceedings that the plff was apprized of the same, and was called upon to submit his say. He clearly and unequivocally denied his having made any encroachments on the defendant's land. In the alternative, he contended without prejudice to his rights, but with a view to avoid as far as possible any struggle with the Revenue Authorities that if any space unaccounted for was found with him, he should be charged assessment at the rate of one pie per Sq. yard at which he was granted the plot in 1930. The matter was bandied from one officer, to another till 26th August 1944, when the Collector ordered that the plaintiff should pay for the encroached area of 207 sq. yard, regarding C.T.S.No.3145/1-2A, Rs 2484/- as occupancy price and Rs 6-8-0 as ground rent per year. The Maintenance Surveyor went even further than the Collector, and called upon the plaintiff to pay not only Rs 2484/- but Rs 51-3-0 as rent and local fund and Rs 130/- as fine, in all Rs 2665-3-0. All the proceedings taken by the various officers and orders passed by them, being contrary to terms conditions and contents of the Sanads referred to above were ultra vires. and illegal and therefore, inoperative in law and not binding on the plaintiff.

7. With a view to err on the safe side and not to leave any loop-hole for the defendant to make any contention under the Revenue Jurisdiction Act, Bombay Land Revenue Code or any similar Act, the plaintiff preferred an Appeal to the Commissioner, S.D., against the Belgaum Collector's order dated 26/8/1944 in respect of C.T.S.Plot No.3145/1-2A at Nipani, which the Commissioner dismissed on 17th September 1947. Thereupon the plaintiff appealed to the Bombay Revenue Tribunal, which dismissed the appeal on 3rd June, 1948. The plaintiff made Revision Application to the Hon'ble the Revenue Member, who rejected on the 6th November

1948. The facts narrated above furnish the plaintiff with the necessary cause of action for filing this suit and seeking therein the relief the plaintiff is entitled to.

8. The cause of action arose at Nipani within the limits of the jurisdiction of this Court on or about the 6th November, 1948, when the final order was made as regards the matters in dispute.

9. The suitis valued for the purposes of the Court-fee stamp at Rs 405/- and for the Court's jurisdiction and pleader's fees at Rs 405/- .

10. A notice under Section 80, C.P.C. has been duly served on the defendant.

11. The plaintiff, therefore, prays as hereunder :-

(A) Inx as much as the Saneds issued by the Defendant in respect of C.T.S.Plot No.3145/1-2A in the Gavthan of Nipani in the District of Belgaum, do in fact cover what the Defendant calls as open space unaccounted for, it be declared that any orders passed by the Defendant, its subordinate officers and its Bombay Revenue Tribunal were ultra virès, illegal and inoperative in law and not bindigg on the plaintiff, for which the claim is valued Rs 200/- for Court fee purposes.

(B) In consequence, the defendant be perpetually restrained by injunction from realizing from the plaintiff by any process of law, any occupancy price, rent, local fundarrears of rent and local fund or fine in respect of what the defendant calls as open space unaccounted for in C.T.S.Plot No.3145/1-2A in the Gavthane of Nipani, for which the claim is valued at Rs 5/- for Court fee purpose.

(C) In the alternative, if the Court finds that the defendant is competent in fact and in law to urge, that the aforesaid C.T.S.Plot No.3145/1-2A, contains some space unaccounted for and to charge occupancy price, rent and so forth for the same, it be declared that the defendant do charge the plaintiff the same according to the rates which prevailed in 1930 and wereapplied to C.T.S.plot No.3145/1 and 3145/2A and not more, for which

the claim is valued at Rs 200/- for Court fee purposes.

(D) The Court do order the defendant to pay to the plaintiff the costs of this suit.

(E) All such orders be passed as the Court deems to be just and reasonable to meet the ends of justice.

This suit coming this day before Shri.D.G.Rajadhyaksha, B.A.(Hons) LL.B.; Civil Judge, Senior Division, Belgaum, in the presence of Shri. D.T.Mole, pleader on behalf of the plaintiff and of Shri. M.R.Patil, District Government Pleader, on behalf of the defendant it is hereby ordered and decreed that :-

Suit dismissed with costs. Plaintiff do pay costs of Defendant and bear his own.

Bill of Costs.

	Pltf.	Deft.
Stamps for plaint	24-10-0.	-
-do- " Vakalat	1-4-0.	0-10-0
-do- " documents.	4-6-0.	-
Pleader's fees.	25 -0-0.	25-0-0.
Process fee.	8-9-0.	-
Witness Potgi	6-5-0	-
Tctal	86-10-4	25-10-0.

Given under my hand and seal of the Court this 18th day of November 1953.

Sd/-
Clerk

Sd/-
Civil Judge, S.D., Belgaum.

Sd/-
Pltf's pleader.

Sd/-
Deft's pleader.

Submitted for information
G. R recording that
[illegible] is issued
File in S. Bel. 9/50

24/5

Sd (M.L) S.S
24/5

S.F. 9/50
24/5

Civil Appeal No. 98/54.

In the Court of the District Judge at Belgaum.

.....

1. Balagauda Tatyagauda Patil, Age 64,
Pensioner, Residing at Nipani,
Taluka Chikodi .... Appellant.(Plff)

Vs.

1. The State of Bombay .... Respondent. (Deft).

Claim Rs 405/- for Court-fee and Jurisdiction.

The above named Appellant begs to appeal against the decree passed in Regular Civil Suit No. 407/49 by the Civil Judge, (Sr.Dn.) Belgaum on the following among other grounds :-

1. The lower Court should have held the suit to be in time. Article 14 of the Limitation Act does not apply to an order of assessment which is a nullity or in excess of authority.
2. The Collector's order Ex.76 read with Ex.78 is ultravires inasmuch as it imposes (i) occupancy price, (ii) Fine (iii) Local Fund; and (iv) Seven years' rent i.e., from 1935 to 1942).
3. When the suit site measuring 207 square yards occupied by the Appellant was unaccounted for, in the Revenue Records as admitted by the Respondent in Ex.68 (Report of the District Inspector of Land Records) and when it was unassessed, the only course left open to the Collector under Section 61 of the Bombay Land Revenue Code was to assess it at such an amount as would be leviable in the same village, on the same extent of similar land used for the same purpose.
4. When Ex. 46- Kabulayat - executed on

13-12-1930 by the Appellant to the Respondent shows, 137 square yards of site was granted on an annual assessment of Annas 12 per square yard, the Collector exceeded the statutory powers conferred by Section 61 of the Bombay Land Revenue Code in calling upon the Appellant to pay Rs 2665-3-0 as shown in Ex.79.

5. The order of the Collector as to the levy of fine of Rs 130/- passed in Ex.79 is without jurisdiction. When the suit site is included in the City Survey limits of the Gaothana of Nipani, the Collector could not have imposed fine exceeding Rs 5/-.

6. The lower Court has erred in applying Rule 103 (limit of fine) of the Bombay Land Revenue Rules Because it presupposes for its application that the land should originally be agricultural and that it should subsequently be used for Non-Agricultural purposes. The suit site is admittedly non-agricultural land.

7. The imposition of Local Fund amount of Rs 5-11-0 in a Municipal area of Nipani on the suit site is illegal.

8. The amount of Rs 45-8-0 claimed by the Collector in Ex. 79 retrospectively as seven years' rent from 1935 to 1942 ~~xxx~~ is without jurisdiction.

9. The mere affirmation of the Collector's order Ex. 76 by the higher Revenue Authorities in appeals and Revision Applications does not take away the jurisdiction of the Civil Court to challenge the legality of the Collector's ~~xxxxx~~ order.

10. The bar under the Revenue Jurisdiction Act, does not apply to orders exceeding the specific limits of assessment prescribed by the Bombay Land Revenue Code.

11. It was the duty of the Mamlatdar to issue Sanad to the Appellant describing not merely the plot but also the property fully by its boundaries and its full dimensions.

12. The Lower Court should have held that the plaintiff's title was duly proved by the boundary description given in the kabulayat (Ex.46) taken by the Mamlatdar showing R.S.No.73 and 74 to the North of the plaintiff's land. The respondent is estopped from claiming any land in between R.S.No. 73 and 74 and the plaintiff's land C.T.S.No.3145.

For all these reasons the decree of the Lower Court may be set aside and the appeal be allowed with costs throughout.

Belgaum. Sd/- D.T.Mole.

Dated:- 1st Feb.54. Pleader for appellant.

Suits:
Belgaum.

For a declaration that (1) the sanads issued by Government in respect of C.T.S.Nos.3145/1 and 3145/2A in the gaothan of Nippani cover the open space which is held to have been encroached upon (2) an injunction against Government and (3) in the alternative, if the encroachment is proved, for a declaration that Government should charge the plaintiff for the encroached land at the rates in force in 1930.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 2420/E
Bombay Castle, 30th October 1954.

Read Government Resolution, Legal Department, No. 1585/E, dated the 22nd January 1954.

In the Court of the Civil Judge (Senior Division), Belgaum.	Letter from the
Civil Suit No.407 of 1949.	District
Balagouda Tatyagouda Patil ... Plaintiff;	Government
Versus	Pleader,
The State of Bombay. ... .. Defendant.	Belgaum,
	No.893,

dated the 6th October 1954 requesting Government's sanction to the defence of the Civil Appeal No.98 of 1954 filed by the plaintiff in the suit noted in the margin.

RESOLUTION:- Sanction is accorded to the defence of Civil Appeal No.98 of 1954 in the Court of the District Judge, Belgaum, on the lines of the brief accompanying Government Resolution, Legal Department, No.7378, dated the 31st May 1950 and the favourable grounds contained in the judgment of the Civil Judge (Senior Division), Belgaum dated the 18th November 1953.

By order and in the name of the
Governor of Bombay,

original R. T. Katarki
(R. T. KATARKI),
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Belgaum,
The Secretary, Bombay Revenue Tribunal,
The District Government Pleader, Belgaum.

SRS/29.10.

File in S. ~~Book~~ Bol. 9/58

Nb
30/10

S S, Bol 30/10

S Bol. 7/50
2/11/32

39

IN THE COURT OF THE ASSISTANT JUDGE,

AT BELGAUM.

Civil Appeal No. 98 of 1954 from decree in Civil Suit No. 407 of 1949 of the Court of the Civil Judge, S.D., (Shri D.G.Rajadhyaksha) of Belgaum.

Pleaders.

Shri D.T.Mole.

1. Balagouda Tatyagouda Patil, age 64, Pensioner, residing at Nipani, Taluka Chikodi. .. Appellant (Original plff).

Against.

Shri M.R.Patil, Dist.Govt.Pleader.

1. The State of Bombay .. Respondent (Original deft.)

Claim Rs 405/- for both.

This appeal arises out of the decision of the Civil Judge, Senior Division, Belgaum (Mr.D.G.Rajadhyaksha) dated 18th November 1953 in Reg. Civil Suit No.407/1949 on his file.

2. This was a suit against Government filed by one Balagouda Patil of Hebbal to obtain a declaration that the orders passed by the deft and its subordinate officers and the Bombay Revenue Tribunal were ultra vires, illegal and inoperative and not binding on him and for a consequent injunction perpetually restraining the deft from realising from him any occupancy price, rent, local fund, arrears of rent and local fund or fine in respect of the open space in dispute, and in the alternative, for a declaration that the Deft was entitled to charge the occupancy price and rent etc., at the rates prevalent in 1930 in respect of City Survey Plots Nos. 3145/1 and 2A. The plaint also included the usual prayer for costs. The case stated in the plaint was briefly these :

The Plot bearing City Survey No.3145/1 of Nipani was taken on lease by the Plff from Government for a period of 50 years and a payment of Rs 147/- was made in that behalf by way of

occupancy price of that plot on 11-12-1930. The necessary Sanad was duly issued to the Plff on 13-12-1930 and the Plot was given in his possession on 14-12-1930. The Deft subsequently started alleging that the Plff had made an encroachment on the adjoining Government land to the extent of 207 Sq.yards and on 26-8-1944, the Collector passed an order requiring him to pay a sum of Rs 2,484/- by way of occupancy price and Rs 6-8-0 as ground rent per year in respect of the aforesaid encroached portion. He was further ordered to pay Rs 51-3-0 by way of arrears of rent and local fund and Rs 130/- by way of fine. An aggregate amount of Rs 2,665-3-0 was thus demanded from the plaintiff. The encroachment proceeding started by the Revenue Authorities and the orders passed in the course of that proceeding were clearly contrary to the terms and conditions of the Sanads issued to the plaintiff and were therefore, illegal and ultra vires. The Plaintiff tried to challenge the same before the Commissioner, S.D., the Bombay Revenue Tribunal and finally before the Hon'ble Revenue Minister, but without any success and the Revision Application made to the Hon'ble Revenue Minister was rejected on 6-11-1948 and hence this suit for the aforesaid reliefs had become necessary!

3. The suit was resisted by Government through the District Government Pleader, Belgaum, by the Written statement at Ex.12. Government contended that an area to the extent of 13⅞ Sq.yards only was originally granted to the Plff and he had subsequently encroached upon the adjoining Government land to the extent of 207 Sq.yards and the Plff's claim that he was entitled to that disputed area by virtue of the Sanad granted to him, was neither true nor maintainable in law and the Collector was therefore, entitled to levy the occupancy price, rent local fund, etc., for the encroached portion of 207 Sq.yards as he did by his order dated 26-8-1944. It was contended that the Plff could not obtain the relief claimed in the suit unless the aforesaid Collector's order was set aside and the present suit not having been brought within one year from the date of the aforesaid order, was barred

by Article 14 of the Indian Limitation Act. In regard to the alternative prayer for a declaration that the Deft should charge for the encroached land at the rates in force in 1930, it was contended that such a relief could not be granted in law and the price and the rates charged must be those in force at the time of the grant in 1944. On these pleadings, the necessary issues for decision were framed at Ex.24. On a consideration of the evidence on record, the learned trial Judge came to the conclusion that the plaintiff had in fact made an encroachment on the adjoining Government land to the extent of 207 Sq.yards and the occupancy, price, rent, local fund and fine charged for the same could not be disputed by the plaintiff. He held that the order passed by the Collector on 26-8-1944 was perfectly legal and valid and the plaintiff's claim for setting it aside was barred by Article 14 of the Indian Limitation Act. Plaintiff's claim for the alterna--tive relief also was rejected on the ground that the price and the rate charged were in accordance with the rates prevalent at the time of the grant in 1944. In the result, the suit of the plaintiff was dismissed with costs and that order of dismissal is now being challenged by the plaintiff in this appeal.

4. On the arguments advanced at the Bar, the points arising for my determination in this appeal are :-

1. Whether Plaintiff proves that the orders passed by the Deft and its subordinate officers are ultra vires and illegal as alleged in the plaint.
2. Whether there is a bar of limitation to the suit under Article 14 of the Indian Limitation Act.
3. To what reliefs, if any, is the Plff entitled ?

5. My findings on these points are :

1. No. 2. Yes. 3. Nil.

6. Facts giving rise to this litigation are few and simple and there is no dispute about the same. The Plot City Survey No.3145/1 out of R.S.No.63 of Nipani admeasuring --

137 Sq.yards, which originally belonged to Government, was given to the plaintiff under a 50 years lease for an occupancy price of Rs 147/- and an annual rent of As 12/- under a Kabulayat (Ex.46) dated 13-12-1930. He subsequently acquired the neighbouring Plot bearing City Survey No.3145/2A from one Rama Bhujang Kshira--sagar who had acquired the same from Government under a Kabulayat (Ex.47) dated 14-6-1927. A house was thereafter built by the plaintiff on both of these plots in about the year 1935 after obtaining the necessary permission from the Nipani Municipality. (Vide Exs.59 to 62). Survey No.74 which lies to the North of these plots was subsequently surveyed by the Survey authorities and in the course of that survey it was noticed that to the South of that land there was some space which had been left unaccounted for in the Gavthana area and the plaintiff had encroached upon the same to the extent of 207 Sq.yards. The District Inspector of Land Records accordingly reported to the Collector (Ex.68) that the aforesaid portion which had been referred to as unaccounted for may be included in the adjoining plots bearing City Survey Nos.3145/1 and 3145/2A on payment of the necessary occupancy price and rent to be fixed by the Collector. In the course of the enquiry that followed, the Collector passed an order (Ex.76) dated 26-8-1944 agreeing to regularise the encroachment made by the present plaintiff and demanded from him a sum of Rs 2,484/- by way of occupancy price, Rs 6-8-0 per year by way of ground rent, Rs 51-3-0 by way of rent and local fund and Rs 130/- by way of fine as specified in the statement at Ex.79. An aggregate amount of Rs 2,665-3-0 was thus charged to the plaintiff for the encroached portion admeasuring 207 Sq.yards. After an unsuccessful attempt to challenge the Collector's order before the higher Revenue authorities including the Bombay Revenue Tribunal (Vide Exs.56, 57 and 58), the plaintiff took recourse to the present suit.

7. Although in the plaint the fact of encroachment to the extent of 207 Sq.yards was disputed by the plaintiff, that allegation

was abandoned at the time of the trial and it was conceded that under the Kabulayat at Ex.46 all that the plaintiff was entitled to was an area of 107 Sq.yards and encroachment on the adjoining land to the North was made to the extent of 207 Sq.yards as found by the Survey authorities. All that was contended in the Court below and is contended in the present Appeal is that the occupancy price and rent charged by the Collector are excessive and the order in regard to fine is not legal and proper. So far as the claim for rent is concerned, the statement at Ex.79 shows that rent for the first three years from 1935-36 to 1937-38 was calculated at Rs 6-8-0 at the old rate in view of the assessment revision in 1938, ground rent for the subsequent six years from 1938-39 to 1943-44 was calculated at Rs 39/- at the rate of Rs 3-2-0 per 100 Sq.yards per year and the annual rent was fixed at Rs 6-8-0. On the side of the Appellant, it was contended that this ground rent should have been charged at the rate of Rs 1-2-3 only in view of the rate of 12 annas per year for 137 Sq.yards stated in the Kabulayat at Ex.46. This contention is clearly unmaintain--able in law. Section 61 of the Bombay Land Revenue Code provides that any person who shall unauthorisedly enter upon occupation of any land set apart for any special purpose or any unoccupied land which has not been alienated, and any person who uses or occupies any such land to the use or occupation of which by reason of any of the provisions of this Act he is not entitled or has ceased to be entitled shall, if the land so occupied by him has not been assessed pay such amount of assessment as would be leviable for the said period in the same village on the same extent of similar and used for the same purpose. It is in accordance with this provision in the Bombay Land Revenue Code that the rent has been fixed by the Collector and under Section 61, the Collector's decision as to the amount of assessment payable for the land unauthorisedly occupied is conclusive. The Civil Court's jurisdiction to question the assessment levied by the Collector is clearly excluded by section 4b of the Bombay Revenue --

Jurisdiction Act. This Court is not therefore competent to entertain a challenge to the assessment which the Collector has lawfully levied in the exercise of his powers under Section 61 of the Bombay Land Revenue Code.

8. The next item challenged by the plaintiff is the amount of Rs 130/- charged by way of fine. On the side of the plaintiff--appellant, it was contended that the order in regard to the levy of this fine was illegal and improper, but here again it seems that the Collector has acted in the exercise of the powers conferred by Section 61 of the Bombay Land Revenue Code. That Section authorises the Collector to levy fine and gives him the discretion to fix the same. Under Rule 103 of the Bombay Land Revenue Rules, the limit of fine to be levied in the case of unauthorised occupation and use of the land for a non-agricul--tural purpose is 20 times the non-agricultural altered assess--ment. The Collector has accordingly levied the fine of Rs 130/- which is equal to 20 times the rent which has been fixed at Rs 6-8-0 per year. It is therefore, difficult to see how the Collector's order in this behalf can be said to be illegal or improper.

9. This leaves the question whether the occupancy price of Rs 2,484/- demanded by the Collector is open to any just exception. On the side of the appellant, it was contended that having regard to the fact that for the original Plot of 137 Sq.yards, the occupancy price charged was Rs 147/- only, a sum to the extent of Rs 222-2-0 only could possibly be claimed for the encroached portion of 207 Sq.yards. This submission is evidentally based on the rates prevalent at the time of the original grant (Ex.46) of 1930. The rates prevalent in that year could not however, be taken into consideration while determining the occupancy price for the disputed portion of 207 Sq.yards. The question of regularising the encroachment by making a fresh grant arose in the year 1944 when the Collector's order at

Ex.76 was passed. This being so, the rates prevalent in the year 1944 alone were relevant and appropriate for the purpose of determining the occupancy price for the additional 207 Sq.yards on which an encroachment was found to have been made by the plaintiff. It appears that this very point was pressed before the Bombay Revenue Tribunal and while dealing with the same, the Tribunal has observed :

> "Upon a ~~compromi~~ comparative estimate of the sales effected in 1944 in this important l cality, we think that the rate charged by the Collector represents a fair market rate of the land in question and is in no way excessive. The suggestion that the rates prevailing in 1930, the year in which the appellant purchased his main Plot, should determine the market rate to be charged for the land sold to the Appellant in 1944 is obviously unreasonable. The prices in the locality are steadily arising and the rate to be fixed would be the prevailing rate when the Collector directed the sale of the land to the Appellant.".

This, in my opinion, is the correct ~~ix~~ view to take and if that is so, it cannot possibly be said that the occupancy price of Rs 2,484/- fixed by the Collector is either excessive or unfair according to the rates prevalent in the year 1944.

10. In addition to the aforesaid amounts, a sum of Rs 5-11-0 has been charged by the Collector by way of local fund. Although in the Memo of Appeal, an exception was taken to this item also the grievance in this behalf was not pressed before me in this appeal presumably because the amount in question is too small and trivial. Any way, it was not shown to me that this amount on the score of local fund could not legally be charged by the Collector.

11. In the view I have taken, it is in my opinion, difficult to accept the contention that the Collector's order in regard to the occupancy price, rent, local fund and fine is

illegal and ultra vires as stated in the plaint. In any case, the suit must in my opinion fail on the score of limitation. As the order issued by the Collector on 6-11-1948 is not shown to be illegal and ultra vires, no relief could possibly be claimed by the plaintiff without setting aside that order. Although no express relief for setting aside the order has been claimed in the plaint, the suit is in substance, although not in form, a suit for setting aside the Collector's order at Ex.76. As such, it ought to have been filed within one year from the date (6-11-48) of that order as required by Article 14 of the Indian Limitation Act. That was clearly not done and the present suit which has been instituted on 31-10-1949 is clearly out of time. The ruling in Secretary of State Vs. Faredoon (36 Bom.L.R.761) is clearly of no assistance to the plaintiff, because all that has been decided in that case is that Article 14 of the Indian Limitation Act does not apply to an order which is a nullity or in excess of authority. An order which is a nullity does not bind any body and it is not therefore, incumbent on the plaintiff to file a suit to set aside the same. But the same cannot possibly be said about the Collector's order at Ex.76. The same having been found to be legal and proper, no relief in consistent with that order can possibly be claimed by the plaintiff unless that order is set aside at his instance. The present suit is therefore, clearly within the purview of Article 14 of the Indian Limitation Act and under that Article, it is clearly barred. In the lower Court, it appears to have been contended that the time occupied by the Appeals before the Revenue authorities including the Bombay Revenue Tribunal should be excluded while computing the period of one year prescribed by Article 14, but that contention was rightly rejected by the learned trial Judge in view of the authority of our High Court in Ganesh Vs. Secretary of State (22 Bom.L.R.212).

12. In my judgment, the view taken by the learned trial Judge is correct and the decree passed by him deserves to be confirmed.

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O R D E R.

Trial Court's decree is hereby confirmed and the appeal is dismissed with costs..

19th April, 1955.

Sd/- D.G.Gatne,

Assistant Judge,
Belgaum.

SHD.

Suits:
Belgaum.

For a declaration that (1) the sanads issued by Government in respect of C.T.S. Nos.3145/1 and 3145/2A in the goathan of Nippani cover the open space which is held to have been encroached upon (2) an injunction against Government and (3) in the alternative, if the encroachment is proved, for a declaration that Government should charge the plaintiff for the encroached land at the rates in force in 1930.

GOVERNMENT OF BOMBAY
Legal Department,
Resolution No. 1239/E
New Secretariat, Foreshore Road,
Bombay, 11th June 1955.

Read Government Resolution, Legal Department No.24620/E dated the 30th October 1954.

Letter from the District Government Pleader, Belgaum No. 351 dated the 22nd April 1955 stating that the Appeal No.98 of 1954 in the suit noted in the margin was decided by the Assistant Judge, Belgaum on the 19th April 1955, when the following order was passed:-

In the Court of the Civil Judge (Senior Division), Belgaum.
Civil Suit No.407 of 1949.
Balagouda Tatyagouda Patil ... Plaintiff;
Versus
The State of Bombay ... ... Defendant.

"Trial Court's decree is hereby confirmed and the appeal is dismissed with costs."

Letter from the District Government Pleader, Belgaum No. 443, dated the 2nd June 1955, forwarding uncertified copy of the judgment.

R E S O L U T I O N: The result of the appeal is recorded.

By order and in the name of the
Governor of Bombay,

10/6

(D.P. Shikhare),
Deputy Secretary to Government.

Original

To

The Revenue Department,
The Collector of Belgaum,
The Secretary, Bombay Revenue Tribunal,
The District Government Pleader, Belgaum.

Submitted for signature.

10/6

D.S. (civil)

తుది తీర్పు నామేయము

బళ్ళగాండ్ల ఇళియ అనిగ్గొండ తుద్దు కొండిరెన్నప్ప

అతిల మొరదయ నంబర 98 ఫ్1954 ✓

బాళగొడ్డ మాత్ర్ గొడ్డ లాడుల

ల.64 నీరు నిల్లిగా

లిదుద్ద

ది స్టేటు అల్ల బొంబే ✓

బళ్ళగాండ్ల ఇళియ శేషిల తుద్దు S.O. కొండిరెన
నీన 1949 నో ఇనేలియ R.O.S.No. 407 నోదరల్లి తొరిసిరువం
నో గ లింగళ్ళ నీన 1953 నో ఇనేలియ తుది తీర్పు నామేయ
యోల్ నీదరల్లి అతిలు బావుల బాడిగెనాదరల్లి
బందిరుత్తవే.

ఇల్లి కేళిద అతిలోట ఇవను.

తొరిసిన తుది తీర్పు నామేయ ఇల్లి బళ్ళగాండ్ల
ఇళియ దిత్తీర్థ కొండిరెగే "అతిలు"నిమాడిరుత్తేనే.

ఈ అతిలు నీన 1955 April లింగళన 19 తొరిసిన
దివసద మే. Gatne Asstt. Judge ఇవర ముందే.
అతిలోటన తేళ్ళిగెయింద మే. A.T. mole ఇవర నేతృత్వదల్లియు
మ. నిశ్చింతోటన. తేళ్ళిగెయింద Govt. Pleader ఇవర నేతృత్వదల్లియు
నీనాపణెయ బళ్ళి బందిద్దరు ఇల్లింద హిగ్గే తుదుయు
బాడువుదరల్లి బరుత్తదే.

Trial court's decree is hereby confirmed
and the Appeal is dismissed with costs."

అత్యాలిన లెచ్చలు

అత్యాలంట	కరచలు
1. అత్యాలిన వ్యాదియ బగ్గే నిర్ణయం ...	24-10-
2. అధికార లిప్తేద బగ్గే నిదర ...	0-10-
3. దావలాడ కాగదగళ బగ్గే నిదర	1-14-
4. లిస్ నోస్టిగళ బజాలనే ...	1-4-
5. .405/- రుపాయిగళ మేలే అశిలన ఛీర్జ్	25-1-
6. నకలుగళ బగ్గే ఛీర్జ్	18-7-
7. లీవర బుద్ధ	10-11-
లెట్టు	82-9-

ఠనెబ్బం.

405/- రూపాయిగళ మేలే అశిలన ఛీర్జ్ 25-1- ✓

CAT 18/5/55

లెట్టు 25-1-

ఈ మొత్త వాక్యవు 19 నేంగళ ఎత్తిల నీన 1955 నే ఇనేలియ దిన నమ్మ నీది లుబాది మత్త తేంగ్ళిదన మొదలు లుబాది కొండెళ్ళిదే.

Sd/- D.G. Gutne
Assistant Judge
21-4-53

S. Red 9/50